

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A15-1002**

Kelly M. Shockman, petitioner,  
Respondent,

vs.

Cory J. Shockman,  
Appellant.

**Filed May 16, 2016  
Affirmed  
Smith, Tracy, Judge**

Anoka County District Court  
File No. 02-FA-12-218

Kurt Robinson, Kurt Robinson, P.A., Blaine, Minnesota (for respondent)

Carrie A. Doom, David M. Kula, McKinnis & Doom, P.A., Cambridge, Minnesota (for  
appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Smith, Tracy,  
Judge.

**UNPUBLISHED OPINION**

**SMITH, TRACY, Judge**

Appellant Cory Shockman appeals the district court's order granting respondent Kelly Shockman's motion requesting a child-support modification and conduct-based attorney fees. Because the district court did not abuse its discretion when it modified the child-support award and ordered conduct-based attorney fees, we affirm.

## **FACTS**

In January 2012, respondent filed a petition for dissolution of her marriage to appellant. In June 2014, following a trial, the district court established appellant's child-support obligation. The district court based appellant's support obligation solely on his 36-hour-per-week job at Unity Hospital in 2013. While appellant testified that he had earned a limited amount of overtime pay at Unity, the district court credited his testimony that he would no longer be able to secure overtime hours.

In July 2014, respondent moved for amended findings of fact and conclusions of law, and requested a modification of appellant's child-support obligation based on undisclosed income. The district court denied respondent's modification motion but ordered appellant to provide previously undisclosed information about a second job at Favorite Healthcare Staffing, Inc. (FHS).

In January 2015, respondent moved to modify appellant's child-support obligation retroactively (based on appellant's actual income) and prospectively (based on changed circumstances). As part of her motion, respondent submitted appellant's 2013 and 2014 FHS income information. Appellant responded, stating that he believed he did not have to report the FHS income because it was income from a second job.

The district court heard respondent's motion on January 21, 2015, and its order was filed on April 21, 2015. The district court determined that appellant's failure to fully disclose all income constituted fraud and warranted reopening and modifying the child-support award pursuant to Minn. Stat. §§ 518.145, subd. 2, 518A.38, subd. 6 (2014). The district court also concluded that appellant failed to meet his burden to show that his

additional 2013 overtime pay from Unity and his previously undisclosed FHS income should be excluded from the modified child-support calculations. Accordingly, the district court granted respondent's motion to retroactively and prospectively modify child support and included appellant's 2013 overtime pay from Unity and the FHS income in its calculations. Furthermore, the district court awarded respondent \$1,500 in conduct-based attorney fees based on appellant's income concealment.

This appeal follows.

## **DECISION**

### **I.**

Appellant argues that the district court abused its discretion when it included the FHS income in its modified child-support calculations. We review a district court's child-support modification for an abuse of discretion. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). A district court abuses its discretion when its decision is based on an erroneous application of the law, is based on findings of fact that are unsupported by the evidence, or is contrary to logic and facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

Appellant argues that the district court abused its discretion by misapplying the law when it concluded that he failed to demonstrate that the FHS income should be excluded from child-support calculations. Appellant raises an issue of statutory interpretation, which we review de novo. *See Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716 (Minn. 2014). Under Minnesota law, certain income may be excluded from gross income for purposes of child-support calculations:

Gross income does not include compensation received by a party for employment in excess of a 40-hour work week, provided that:

....  
(2) *the party demonstrates, and the court finds, that:*

(i) the excess employment began after the filing of the petition for dissolution or legal separation or a petition related to custody, parenting time, or support;

(ii) *the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;*

(iii) the excess employment is voluntary and not a condition of employment;

(iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and

(v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

Minn. Stat. § 518A.29(b)(2) (2014) (emphasis added). The party seeking to exclude excess income from a child-support calculation bears the burden of demonstrating all five elements. *Id.*

The second element requires the party seeking exclusion to show that “the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition.” *Id.* (b)(2)(ii). The district court concluded that the FHS income should be included in its child-support calculations because appellant failed to demonstrate that the hours he worked at FHS reflected an increase in his work schedule as compared to the two years before the divorce petition’s filing date. *See id.* Appellant contends that the district court’s decision on this element rests on “speculation and conjecture” about his prepetition work hours.

As his proof on the second element, appellant points to the June 2014 order wherein the district court found that appellant's employment consisted of only his 36-hour-per-week job at Unity. He also points to his January 21, 2015 hearing testimony where he explained the fluctuating nature of his job with FHS. But neither the district court's findings in the June 2014 order nor appellant's hearing testimony bear on appellant's work schedule during the two years before the dissolution petition's January 2012 filing date. The district court aptly concluded that appellant failed to direct its "attention to any evidence . . . that he was not also working additional hours and earning consistent additional income in the past."

Appellant had the burden to prove that his work at FHS was in excess of the hours he worked in the two years before respondent filed the dissolution petition. *See id.* He cannot now complain that the district court's ruling is deficient when its primary reason for ruling against him was his failure to produce evidence on that critical element. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Because the district court did not err when it concluded that appellant failed to meet his burden, appellant has not shown that the district court abused its discretion when it included appellant's FHS income in its modified child-support calculation.

Appellant makes arguments under the remaining elements. The district court's decision rests, however, on appellant's failure to submit evidence of his prepetition work schedule. A party's failure to establish one element is fatal to an attempt to exclude excess

income from child-support calculations. *See* Minn. Stat. § 518A.29(b)(2). We therefore need not address appellant’s arguments on the remaining elements.

## II.

Appellant also argues that the district court abused its discretion when it ordered him to pay \$1,500 in conduct-based attorney fees. A district court “may” award conduct-based attorney fees in a dissolution case against a party who “unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2014). To award conduct-based attorney fees under section 518.14, a district court must identify behavior that occurred during the proceeding that had the effect of increasing the proceeding’s cost or duration. *Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001), *review denied* (Minn. Aug. 20, 2002). An award of conduct-based attorney fees is reviewed for an abuse of discretion. *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014).

The district court determined that appellant’s “repeated failure to be honest and forthright has contributed unreasonably to the length and expense of these proceedings.” Appellant concedes that the district court identified conduct that occurred during the proceedings but denies that the cited conduct unreasonably contributed to the length or cost of the proceedings. He argues that he acted reasonably because he had a colorable argument to exclude the FHS income and he disclosed the information shortly after the district court ordered him to provide it. Appellant is incorrect.

Appellant may have had a nonfrivolous argument that the FHS income should eventually be excluded, but the question of whether to exclude income from the child-support calculation is to be decided by the district court, not by a party. When child support

will be determined in a dissolution proceeding, each party to the proceeding must initially disclose “all sources of gross income.” Minn. Stat. § 518A.28(a) (2014). “[G]ross income includes any form of periodic payment to an individual . . . .” Minn. Stat. § 518A.29(a) (2014). Excess income is excluded only after a party demonstrates, and the district court finds, the requisite statutory elements. *See id.* (b)(2). We reject appellant’s argument that his decision to withhold the FHS income information did not unreasonably contribute to the length or cost of the proceedings.

Moreover, in its attorney-fee award, the district court broadly referenced appellant’s “decision to conceal a portion of his income.” Part of that concealed income was the extent of the overtime pay that appellant earned at Unity in 2013. Appellant does not argue that it was reasonable for him to obscure the extent of his 2013 overtime pay and has not otherwise briefed the question to this court. Therefore, that question is not properly before this court. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

The child-support figure could have been settled when the district court established appellant’s child-support obligation in June 2014. Appellant’s lack of candor with respect to his 2013 Unity overtime earnings and his FHS income required respondent to initiate further proceedings and left the matter unsettled until the district court filed its April 2015 order. Consequently, the district court acted within its discretion in determining that appellant’s conduct unreasonably contributed to the length and expense of the proceedings and in awarding \$1,500 in attorney fees to respondent. *See* Minn. Stat. § 518.14, subd. 1.

**Affirmed.**